

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELCLC NO. E001 OF 2026**

**ABDALLA AWADH OMAR** .....  
**PLAINTIFF**

**VERSUS**

**ALEX BAYA KAZURI & 9 OTHERS** .....  
**DEFENDANTS**

**RULING**

1. The Notice of Motion dated **8<sup>th</sup> January 2026** is seeking an order that pending the hearing and determination of this suit, an order do issue restraining the 11<sup>th</sup> defendant respondent by himself and or his agents from registering, executing the decree dated 21<sup>st</sup> November 2025.
2. In the replying affidavit dated 21<sup>st</sup> January 2026, the first respondent stated that the respondents had filed a suit for adverse possession against the registered owners of the suit land vide *Malindi ELC Case Number 16 Of 2023 OS*, and it was determined in the favour of the respondents in a judgment delivered by the honorable Justice Evans Makori on 22<sup>nd</sup> October 2025. The deponent also stated that the decree has already been executed by being registered against the title and that this court lacks jurisdiction to hear and determine this suit, as the matter is *res judicata*.
3. I have called for the original file record in *Malindi ELC Case Number 16 Of 2023 OS*, and found that it exists, and that there is a judgment dated 22/10/25 that has not been set aside with regard to the suit land, and so the statement of the respondents contained in their replying affidavit are correct. Also, the defendants in that case were the registered owners of the land reflected in the certificate of postal search dated 12<sup>th</sup> May 2023, and that was the search certificate relied on to file the former suit. It has now been annexed to the replying affidavit in the present application.

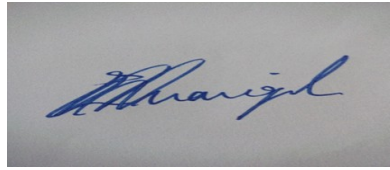
4. Besides, in that original file record, there are letters from the Mombasa Lands Office seeking to verify if the decree is correct which were answered by the Deputy Registrar of this court in **2025** while this suit was filed in the year **2026**. The court in that judgment stated as follows:

*“The respondents who were served with the pleadings through substituted service, specifically by an advertisement in the Daily Nation on January 19, 2024, chose not to appear, respond, or take any action regarding the lawsuit against them. Directions were issued for the matter to proceed as an undefended suit.”*

5. It is clear from the above excerpt that the dispute between the defendants and the registered owners of the suit land in respect of title to the suit land herein it has been finalized and there is a judgment in favour of the defendants herein that has not been set aside. This court has not been told in the present application by the plaintiff what to do with that judgment that grants the defendants rights to the same land the plaintiff seeks that they be evicted from. It is also clear that if the present plaintiff has any grievance that can be addressed under the law, he should have brought it in that case.
6. It was also incumbent on the plaintiff to demonstrate that the decree has not been executed and that perchance it did so, the court is would not issue orders in vain. However, there was no response filed to the replying affidavit of the respondents to controvert the allegation that the decree has already been executed. Even though the respondents have not exhibited a search certificate showing that the land had been registered in their favour, this court finds that assertion as credible in the circumstances and so **prayer no 4** of the application can not issue as against the Land Registrar. Consequently, **prayer no 5** can not also issue against the other respondents.
7. Having considered the motion, I find that it lacks merit and I hereby dismiss it with costs to the respondents.

**Dated, signed and delivered at Malindi on this 23<sup>rd</sup> Day of April, 2026.**

**MWANGI  
JUDGE, ELC,**

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Njoroge'.

**NJOROGE,  
MALINDI.**